

1/25/2007

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E-FILED ON JANUARY \_\_, 2007

Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE  
 COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

In re:  
 USA CAPITAL FIRST TRUST DEED FUND,  
 LLC,  
 Debtor.

**AFFIDAVIT OF RICHARD S. HARTLEY  
 IN SUPPORT OF APPLICATION  
 PURSUANT TO FED.R.BANKR.P.  
 2014(a) AUTHORIZING THE  
 EMPLOYMENT AND RETENTION OF  
 KPMG, LLP AS "ORDINARY  
 COURSE TAX CONSULTANTS"  
 (AFFECTS ALL DEBTORS)**

In re:  
 USA SECURITIES, LLC,  
 Debtor.

Affects:

- ☐ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

Date: N/A  
 Time: N/A

STATE OF NEVADA )  
 ) ss  
COUNTY OF CLARK )

I, RICHARD S. HARTLEY, hereby swear under oath:

1. I am over the age of 18, am mentally competent, have knowledge of the facts in this matter, and if called upon to do so, could and would testify.<sup>1</sup>

2. I am a Certified Public Accountant and a partner of KPMG LLP, a professional services firm. KPMG LLP is the United States member firm of KPMG International, a Swiss cooperative (the “Firm”). Only KPMG LLP is being retained in this matter.

3. This Affidavit is being submitted in connection with an order of the United States Bankruptcy Court for the District of Nevada entered October 23, 2006 authorizing USA Commercial Mortgage Company, USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed Fund, LLC, USA Capital First Trust Deed Fund, LLC, and USA Securities, LLC (collectively, the “Debtors”) to retain certain professionals in the ordinary course of business (the “Ordinary Course Order”). Pursuant to 11 U.S.C. § 327, the Debtors have requested, and the Firm has agreed, to provide certain tax consulting services to the Debtors including, but not limited to, the preparation of : (a) a written memorandum with regard to applicable tax law relating to the partial write down of assets for income tax purposes, (b) the corporate tax return for USA Commercial Mortgage Company and (c) the partnership tax returns for USA Capital First Trust Deed Fund, LLC, USA Capital Diversified Trust Fund, LLC, USA Securities, LLC and USA Capital Realty Advisors, LLC.

<sup>1</sup> Certain of the disclosures herein relate to matters within the knowledge of other professionals at KPMG LLP.

4. Based on the conflicts search conducted to date, the results of which are set forth on Exhibits A and B, I am informed and believe that: (a) neither I, the Firm, nor any member, counsel, or associate thereof, represents or holds any interest adverse to the Debtors or their estates and (b) the Firm is a disinterested party as that term is defined by 11 U.S.C. § 101(14). The Firm has not performed a comprehensive global search for potential relationships between the other KPMG International member firms and the Debtors, other parties-in-interest, and their respective attorneys and accountants.

5. The Debtors desire to employ the Firm on an hourly basis and on the terms and conditions set forth below and in the engagement letter which is attached hereto as Exhibit C. The hourly billing rates are as follows:

Partners	\$385
Senior Managers	\$325
Senior Associate	\$225
Staff	\$185

These rates are subject to periodic adjustments to reflect economic and other conditions. The Firm has agreed to bill at the above stated rates which are less than 75% of our standard billing rates.

6. The Firm will bill for out-of-pocket expenses, which should not exceed 20 percent of total estimated fees. These expenses may include such items as travel, lodging, meals, telephone, videoconferencing, word-processing, graphics, and administrative support.

7. The Firm intends to submit its requests for compensation and reimbursement of its expenses in accordance with the Ordinary Course Order. The Firm will only seek and accept compensation from the applicable Debtor bankruptcy estate pursuant to the Ordinary Course Order.

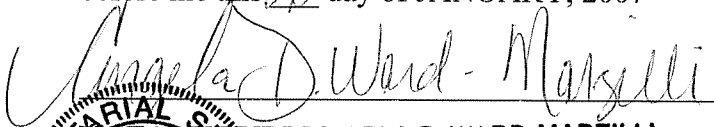
8. The Firm has neither shared, nor agreed to share, any compensation for this engagement with any other person except as among the members of the Firm.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
\_\_\_\_\_  
RICHARD S. HARTLEY

SUBSCRIBED AND SWORN TO

before me this 25 day of JANUARY, 2007

  
\_\_\_\_\_  
ANGELA D. WARD-MARZILLI  
NOTARY PUBLIC  
IN AND FOR THE STATE OF OHIO  
MY COMMISSION EXPIRES  
NOVEMBER 1, 2008



## **EXHIBIT A**

This information is being provided in connection with the Affidavit of Richard Hartley, a Partner of KPMG LLP, in support of the Application Pursuant to Fed. R. Bankr. P. 2014(a) Authorizing The Employment and Retention of KPMG, LLP As “Ordinary Course Tax Consultants.” The following names were provided to KPMG LLP by Debtors’ counsel and compared to its client database from 1/1/2002 to identify any connection or relationship.

### **Debtors**

USA Commercial Mortgage Company

USA Capital Realty Advisors, LLC

USA Capital Diversified Trust Deed Fund, LLC

USA Capital First Trust Deed Fund, LLC

USA Securities, LLC

### **Creditors**

RJ Rocco

Joseph and Loretta Donnolo

Attila Jefzenszky

Vince Danelian

Paul and Donna Jacques

Peter Bolino

Stan Wolken

Miklos Steuer

American Express Bank FSB

S & J Enterprise

Lou O. Maldonado

Prospect High Income Fund

David Fossati

James Corison

Lynn Kantor and Gary Kanton

Roseberry Family LP

Community Bank of Nevada

Rodney Roloff and Sharyn Roloff

Scott Krusee Canepa

John Michelsen and Gary Michelsen

Howard Connell

Augustine Tuffanelli

Russell James Zuardo

Frank Snopko

Norman Kiven

Gary A. Sheerin

Kehl Family

Allen J. Mault

A. William Ceglia and Ranee L. Ceglia

Sierra Health Services

Michael Hedlund and Carol Hedlund

City of Temecula

Capital Crossing Bank

**Unsecured Creditors**

Kummer, Kaempfer, Bonner & Renshaw

Intershow

James Hull

George Gorman

R. Hagmaier

Tim Rich

Bunch, Dell

Advanced Information Systems

Russell Ad Development Group, LLC

Robert A. Russell

Annee Nounna

Robert L. Hagmaier

John Bauer, IRA

Nevada State Bank

Broadwalk Investments L.P.

Michael Peterson

Paris Line LLC

Pecos Professional Park

Wells Fargo Bank

Annee of Paris Coiffures, Inc.

Haspinov, LLC

Bank of America

USA Commercial Real Estate Group

Citibank

U.S. Bank

Goolde Patterson Ales & Day

Nevada Department of Taxation

Scotsman Publishing, Inc.

RD Advertising

West Coast Life Insurance Company

Special Order Systems

Larry L. Reiger and Patsy Rieger Revocable Trust

**Equity Security Holders**

Robert E. Taylor

John Warner, Jr., IRA

John Warner, Jr.

Mary E. and Matthew J. Moro, JTWROS

Richard G. Woudstra Revocable Trust

Wen Baldwin Separate Property Trust

John Goings

Robert G. Worthen

Katz 2000 Separate Property Trust

Thomas C. Lawyer Family Trust

Jerry T. McGimsey

Charles O. Nichols and Flora A. Nichols

Robert Hardy

**General Partner**

Robert Verchota

**Government/Regulatory Agencies**

Nevada Mortgage Lending Division

U.S. Securities and Exchange Commission

Pension Benefit Guaranty Corporation

Department of Employment Training

DMV and Public Safety Records Section

Employers Insurance Co. of NV

NV Department of Taxation



Internal Revenue Service

Secretary of State for Nevada

NV Department of Taxation, Revenue Division

Office of Labor Commissioner

Office of the U.S. Attorney, District of Nevada

United States Department of Justice, Tax Division

District Counsel, Internal Revenue Service

Internal Revenue Service

FHA/HUD

Department of Veterans Affairs

Clark County Treasurer

Clark County Assessor

**Holders of Executory Contracts/Investors**

Fertitta Enterprises, Inc.

Helms Homes, LLC

Terry Helms Living Trust

Dennis Flier, Inc. Defined Benefit Trust

Arthur Polacheck and Glorianne Polacheck

James W. McCollum and Pamela P.  
McCollum

Homfeld II, LLC

**Investors**

Robert J. Kehl and Ruth Ann Kehl

Rocklin/Redding LLC

Charles B. Anderson Trust

Cardwell Family Trust

MLH Family Investment Limited

Donald S. Tomlin and Dorothy R. Tomlin  
Revocable Trust

August J. Amaral, Inc.

Dennis Raggi

Eric Lynn Lester and Cassie Lester

Herman, Brian, or Anthony Adams

Kantor Nephrology Consultants

Gary Kantor

Kusum Desai, MD

AAA OM Financial, LLC

Everett H. Johnston Family Trust

John Parker Kurlinski & Claire Sawyer  
Kurlinski

The L.E. and J.G. Blair Family Trust

The 2003 Richard N. Krupp, Charitable  
Remainder

Emona Dental Studios, Inc. Pension and  
Profit Sharing

Frank Reale, DC

Molitch 1997 Trust

Michaelian Holdings, LLC

The Gannaway Charitable Remainder Trust

First Trust Company of Onaga C/F Jean-  
Jacques

Children's Dental Group, Inc. Defined  
Benefit Pension

R.T. Enterprises

Robert G. Berry Jr. and Jeannette K. Berry

Gwen Melonas Family Trust

Aristotle S. Melonas

Andrew and Ellen Dauscher

Steven M. and Margaret W. Terry Trust

William Edwards

William W. Miller

Toni Antonacci Trust

Jack and Sylvia Goldenthal

Kohler Living Trust

John Warner Jr., IRA

James J. Tanaka, IRA

Donna Luttel, Gerhard Luttel, Gwendolyn  
Allred

Jerrold T. Martin

**Lenders**

Jay S. Stein

Bernie Sandler

David Gackebach

Susan Gackebach

Robert Rowley

**Interested Parties**

BMC Group, Inc.

Franklin/Stratford Investment, LLC

Richard McKnight

Maryette Bowman

Gandolfo, Margie

Janny Catharina Brouwer

Jayem Family Limited Partnership

Aspen Square Management

Terri Nelson

Ed Schoonover

Alex Gassio

Sue Schoonover

Bill Ovca

Fern Apter

Mark Zipkin

Aylene Geringar

Michael R. Shuler

Kermit Kruse

The Garrett Group, LLC

William L. McGimsey, Esq.

The Najarian Law Firm

G & L Trust

Louis John Canepa Revocable Trust

Evelyn G. Canepa Trust

Nicholas J.Santoro and Juanita Santoro

Angelo, Gordon & Co.

Royal Vacation Suites, Inc.

Bay Communities

Erven T. Nelson, Frankie Nelson

Project Disbursement Group, Inc.

Andrew Welcher

William D. Cope

John Peter Lee Ltd.

Liberty Bank

Roam Development LP

Michael Gortz

Frank Raymon Lee

Mountain West Mortgage LLC

Joseph Huggins

Milanwoski, Hantges, UAS Investment  
Partners

Alexander et al

Credit Shelter Trust

Robert A. Cowman and Sandra L. Cowman

David R. Enrico and Bonny K. Enrico

David W. Sexton and Pamela K. Sexton

Mojave Canyon Inc.

Gateway Stone Associates, LLC

Amy N. Tirre

Compass Partners, LLC

Reed Smith LLP

## **EXHIBIT B**

This information is being provided in connection with the Affidavit of Richard Hartley in support of the Application Pursuant to Fed. R. Bankr. P. 2014(a) Authorizing The Employment and Retention of KPMG, LLP As “Ordinary Course Tax Consultants.”. KPMG LLP currently performs (or has previously performed) accounting, tax advisory or consulting services in matters unrelated to this Chapter 11 case for the following entities, or has connections or relationships with the following entities:

### **Creditors**

American Express Bank FSB

Allen J. Mault

Sierra Health Services

Capital Crossing Bank

### **Unsecured Creditors**

Robert A. Russell

Pecos Professional Park

Nevada State Bank

Wells Fargo Bank

Bank of America

Citibank

U.S. Bank

### **Equity Security Holders**

Robert E. Taylor

John Warner, Jr., IRA

Charles O. Nichols and Flora A. Nichols

**Government/Regulatory Agencies**

U.S. Securities and Exchange Commission

Pension Benefit Guaranty Corporation

Department of Employment Training

DMV and Public Safety Records Section

Internal Revenue Service

United States Department of Justice, Tax Division

District Counsel, Internal Revenue Service

FHA/HUD

Department of Veterans Affairs

Clark County Treasurer

**Investors**

Herman, Brian, or Anthony Adams

AAA OM Financial, LLC

Robert G. Berry Jr. and Jeannette K. Berry

William Edwards

William W. Miller

John Warner Jr., IRA

**Interested Parties**

Angelo, Gordon & Co.

John Peter Lee Ltd.

Liberty Bank

Michael Gortz

Frank Raymon Lee

Alexander et al

Compass Partners, LLC

Reed Smith LLP